

COMMISSIONERS APPROVAL

ROKOSCH 

GRANDSTAFF 

THOMPSON 

CHILCOTT

DRISCOLL 

Date.....July 19, 2007

Members Present.....Commissioner Jim Rokosch, Commissioner Carlotta Grandstaff, Commissioner Alan Thompson, Commissioner Greg Chilcott and Commissioner Kathleen Driscoll

Minutes: Glenda Wiles

The Board met for a continuation of the public hearing for Moiese Meadows Subdivision. (The previous meeting was held on July 2, 2007). Planning Director Karen Hughes, Civil Counsel Alex Beal Developer Ron Lords and the Developer's Counsel and Representative was also present.

Commissioner Rokosch noted public comment has been closed for Board deliberation. However the Commissioners have the ability to ask and allow questions from the public if they so chose. He noted between the last meetings of July 2nd and now, there has been some ex-parte' communication between Commissioners and members of the public that should be disclosed.

Commissioner Driscoll stated the Friday after the July 2nd hearing, the Developer's Representative Nathan Lucke visited with her by phone and they discussed the subdivision. She indicated because she was new to this position, she did not know to stop Nathan and his discussion. Nathan asked her about the three issues that had come up (the issues in the motion to deny by Commissioner Grandstaff) and how they could be resolved, along with a few other issues. After this conversation, Marilyn Owns-Medicine also attempted to speak with her, but she stopped her and told her she was in a judicial role and could not discuss the subdivision. Commissioner Driscoll stated she will make a statement to this effect if needed for the record. Alex asked Commissioner Driscoll to describe the conversation with Nathan. Commissioner Driscoll stated 'it was about the water issue and Nathan felt they would not be able to do a community well and could they do any thing else?' She told him she could not make any promises. Nathan asked if a hydrologist could come in, and she advised him she would have to see any proposal. She also expressed her concern for the agricultural and law enforcement impacts for this

subdivision. Commissioner Driscoll stated when Marilyn came in to see her, the only thing she told her was the Developer was going to bring in a hydrologist.

Commissioner Grandstaff also indicated Nathan called her on the phone. She stated Nathan offered \$350.00 per lot for law enforcement mitigation. However, she made no comment. She told him she had problems with the park land and he said he would be willing to make it a 'real park' with picnic tables etc. Nathan also offered to drill the wells to a deeper aquifer but they did not discuss that offer because she did not understand it fully.

Commissioner Chilcott stated he too talked to Nathan, but no information was discussed.

Commissioner Rokosch indicated he too received a phone call from Nathan but he told him he could not discuss the actual subdivision, but they could discuss the subdivision process, review and considerations.

Commissioner Rokosch asked Nathan if he concurred with these communications. Nathan apologized for making those phone calls. He stated he was unaware this was inappropriate. He took notes with those four discussions and finds he concurs with what has been stated for the record. He also added he discussed zoning with Commissioner Driscoll, but there was no decisions made on her part. In regard to his conversation with Commissioner Grandstaff they discussed the agricultural land, law enforcement, setting a precedent and support data, along with the parks and community water. Again no decisions were made. Nathan stated he would like to submit some of that information at today's meeting.

Commissioner Rokosch asked Marilyn Owns Medicine about her conversation with Commissioner Driscoll. She stated Commissioner Driscoll described the conversation well and she was not aware it was inappropriate to talk about Moiese Meadows, as she happened to be at the Commissioners Office on another issue. She added Commissioner Driscoll told her she could not discuss this as she was in a judicial role. Marilyn stated she would also like to submit information from the USDA at today's meeting.

Commissioner Thompson commented no one wanted to talk to him about this subdivision. (A moment of laughter!)

Commissioner Rokosch stated they should review the criteria first as these are used to develop the basis for the Board's decision for conditional approval or denial. He stated the Board must meet the regulation requirements for the subdivision platting act, be consistent with the zoning regulations and make sure the proposal is in the public interest.

In regard to the effects on agricultural: Commissioner Rokosch stated at the last meeting they discussed the loss of agricultural ground if this proposal was approved. He stated the Developer offered no mitigation of that loss. Commissioner Rokosch then asked Nathan for a response. Nathan stated he has some responses under the six criteria

he would like to present, noting it was not new information. (The information was then given to the Commissioners).

Curtis Cook stated he would like an opportunity to review this information Nathan handed out.

Nathan stated this handout addresses the finding of facts that are based on evidence. The purpose of this document is the Developer's attempt to show evidence in order to support this approval. Items in black print are information that was presented. Items in blue print are items that were brought up at the last meeting, but they need to prove that information. Items in red print are information that will be addressed by the experts they have with them today.

Nathan stated in regard to the agriculture issue, there are no irrigation rights on this property. There is not prime farm land property. He stated he talked to Dan Huls who is Chairman of the Right to Farm and Ranch Board and Dan told him to review the report by Dr. Swanson. To summarize the Dr. Swanson report, agricultural land is important but difficult to maintain. There are 1,400 farms in Ravalli County and 2/3rd of those farms are 50 acres or smaller. Nathan stated removing these 33 acres is not a significant impact to the agricultural community.

Commissioner Rokosch stated there was a comment at the last meeting in regard to water (irrigation rights). He stated water rights could be applied for and obtained, and this site could have water. He also noted when he visited the site he noted hay had been harvested this year. Therefore, Commissioner Rokosch felt this parcel of land is indeed an agricultural property.

Commissioner Chilcott noted even if 2/3rd's of the farms were removed from agricultural production, 93% of the agricultural land would still be useable. He stated Commissioner Rokosch's argument makes the assumption there are measures in place to have this land remain in place as agricultural. Commissioner Chilcott noted they are talking about this particular 33 acres, not the remaining farm land.

Commissioner Rokosch stated he appreciates Commissioner Chilcott's comment but he was responding to Nathan's comments about the entire agricultural land in the valley. If this land produced hay this season, it is agricultural land.

Nathan stated the hay that was taken was low yield as it was produced with no irrigation water. The production was basically for fire control as the neighbor from the south west received the hay for free just for mowing it.

Commissioner Rokosch asked if there were any proposals to mitigate the impacts on the loss of agricultural land being offered. Nathan stated it is their position, based on the evidence; there is no significant impacts on agricultural.

Commissioner Grandstaff noted this is agricultural land, i.e., the hay, and it has been used to produce hay in the past, but noted the Developer is not willing to mitigate this issue.

Commissioner Chilcott stated the Developer has noted this is not significant; and concurred noting there are no water rights nor have there ever been water rights to this parcel of land.

Attorney Bill Van Canagan stated he represents Ron Lords. He advised the Commissioners there has to be an adverse circumstance in order to require mitigation.

Commissioner Driscoll advised Bill this is your perception. She again reiterated this is one piece of property that is being taken out of agricultural land. She sees this 'from a different place or perspective than the Developer'.

Bill stated the issue should be decided upon by the evidence and not on the individual's personal preference or belief. He cautioned the Commissioners to make the decision on a substantive basis.

Commissioner Rokosch stated his substantive basis is this is indeed being utilized as agricultural land, thus germane to the conversation, and it is a significant impact on the agricultural ground. If so, there should be some consideration for that impact.

Bill stated the evidence rises above personal opinion and the economic value through agriculture is defensible. The hay is being cut for fire purposes and given away. That is evidence.

Commissioner Grandstaff asked if economic viability is part of the criteria.

Commissioner Chilcott stated they have reviewed the effects on the agricultural sector, i.e., the loss of ground and possible farming activities. He stated the question is if it is significant or non significant. Commissioner Chilcott stated from his perspective and as a member of the Board, the agricultural issue is non significant.

Commissioner Thompson stated he lives on a farm and yesterday was water day, but there was not enough water. He stated they are 'burning up' and he can not imagine trying to farm any acreage without water. Dry land farming takes hundreds of acres and 33 acres is not much ground to do any kind of farming on. He too feels this is not significant, particularly in light of the lack of water.

Commissioner Grandstaff asked again if economic considerations are part of this decision. Commissioner Rokosch stated the effects on the agricultural sector might be a part of that. The question is the range of agriculture and whatever the nature of the ground use is. He stated the decision should be made on the current activities and potential loss, as that is what makes it significant.

Nathan stated the staff report addresses this as non significant and he does not see any evidence to the contrary.

Terry Nelson stated in the last 7-8 years five subdivisions adjacent to this have been approved and none of them had any significance of agricultural land.

Ed Cummings (previous Planning Board Member) stated he had owned this land some time ago and the soils in the area were porous, thus it was difficult to keep agriculture in the area.

Commissioner Driscoll stated she remembers a previous meeting and it was determined they had stripped the soil and water years before, making it viable for a subdivision.

Bill stated the factors establish the evidence, i.e., the lack of water, water rights, viability for agriculture, history and soils that do not rise to the level of prime soils. He stated it is a dangerous precedent to review parcels in light of turning them into residential. He once again requested the Board review the evidence.

Commissioner Rokosch stated this is his opinion and it has been stated by others as well.

Bill stated he would object to that characterization, as those are facts as to how the land has been operated and treated over the years. Commissioner Rokosch asked if he had the history on crop production on this parcel; whether or not the crop was traded etc., because the point is if it is agriculture or has been used as agriculture.

Commissioner Chilcott asked if there was evidence to the contrary on the testimony they have received today.

Commissioner Rokosch stated that is the question. The only fact that has been presented is there have never been any water rights, but there has been characterization that this is not agricultural land.

Commissioner Driscoll stated some of these issues started years ago when it was downgraded from agricultural land. She stated she can see this ground as viable agricultural land. The process has been they have striped things off the property, not making it viable for production. She stated she is looking at the soil, water etc. to make this viable for a subdivision.

Commissioner Thompson stated they need to be careful with this kind of consideration. While he agrees with Commissioner Driscoll they also need to understand within the issue of production, small parcels of land become difficult to farm. There are expenses that do not provide a net to the farmer. Many people have lived on farms all their life, and this is their only retirement. He stated they need to be careful setting precedents where they tell the agricultural community they do not care if they make money or not, but rather they have to stay on the farm. He stated he is not talking specifically to any developer who bought land.

Commissioner Rokosch stated they are not saying that, but they are saying if there is an impact there needs to be mitigation.

Commissioner Grandstaff stated if there was a hay crop that makes this agricultural ground. The question is if we have made that determination, the Developer needs to offer mitigation and he has not done so.

Commissioner Chilcott reiterated the question is if it is significant to the agricultural community. He stated they can not ask for any mitigation unless they determine that.

Commissioner Rokosch asked for a show of hands if this is a significant or not.

Bill stated in regard to the evidence, personal knowledge of the land owner and the history of this land is direct evidence. Whether water rights could be obtained is speculative. The characterization of the hay removal as a crop is a misnomer. He advised them to carefully consider that.

Ron stated they run 100 cows on pasture and he does not use this land for any pasture. He also asked if this land was viable for agriculture would he have a neighbor mow it for fire protection. He stated his wife has owned this land for 4 years. The neighbor cuts and mows the land for free and he uses the hay to feed his sheep. His direct benefit is the fire protection.

Commissioner Rokosch asked if there was any fencing on the property. Ron stated he puts up electric fences everywhere, as it takes only minutes to install them.

Commissioner Chilcott stated if the Board wants to speculate if water could be put there; it would have to be purchased and taken from someone else. He indicated to obtain water for this land would be to 'rob Peter to pay Paul' as it would have to come from someone else's land.

Commissioner Rokosch stated there are substantial agricultural values that might be converted for residential, so we are not 'robbing Peter to pay Paul. The irrigation districts require apportionment.

Commissioner Chilcott responded that he would like to see evidence of that.

Nathan stated with the evidence presented it shows there will be no significant impact.

Commissioner Rokosch stated he appreciated Nathan's characterization but he does not agree with that.

Commissioner Chilcott stated Commissioner Rokosch asked for a show of hands and he has not seen that.

Commissioner Rokosch then called for a show of hands to state this proposal has a significant impact or effect on agriculture. Commissioner Rokosch was the only member to show his hand.

Commissioner Grandstaff stated any agricultural land taken out of production is significant. However someone had the foresight to strip this of soil and water rights making it only viable for residential.

Nathan stated the water rights are for the Supply Ditch which dates back to the 1800's and this property has never had water rights. Commissioner Grandstaff stated she stands corrected on the water rights issue.

Nathan stated in the environmental assessment there were 20 soils profiles done. The profile report shows there is 8-10" of top soil, therefore it appears the soil was never stripped.

Commissioner Driscoll stated while she did not raise her hand she still feels it is significant when you view the valley as a whole.

In regard to the effects on agricultural water user's facilities: Commissioner Chilcott stated in order to expedite this discussion, he noted they have all of the information and have talked about the issue of water use. Rather than hear all of this again, we need to review this to see if it has a significant impact.

Nathan stated the ditch will be placed on an easement within this property and protected. The ditch is being piped as request by the Refuge and the homeowners will have notification of not being able to utilize the water.

Commissioner Rokosch asked about the maintenance of the ditch. Nathan stated there is nothing in the proposal that will limit the property owners the use of that easement, other than building a structure upon it. Karen noted this information is within the notification to the lot owners. Commissioner Rokosch asked if there should be specific language so the lot owners know the easement holders could use herbicides and or fire. Nathan indicated they could do that.

Commissioner Rokosch noted they also heard concern about the pipe installation. Nathan stated in regard to the Army Corp of Engineers, a permit was needed in order to pipe the ditch due to the effects of wetlands. Ron stated they are simply providing the pipe. The Refuge is doing all the work as per their request. Nathan stated this will come from the supply head gate through the property (2,600'). The down stream user's notification is not required by the Subdivision Regulations because the Refuge is making the installation. Steve Whitson advised the Board the two downstream users have been notified. Commissioner Rokosch noted the effects on agricultural water user's facilities are thereby mitigated.

In regard to the effects on local services: Commissioner Rokosch stated the subdivision regulations that are applicable here are the local services; which include roads, police, fire, utilities and schools.

Nathan addressed the packet that was handed out. He stated the Montana Department of Transportation (MDOT) approach permit gives access to the Eastside Highway as does the local approach permit from the County. WGM Engineers and the Road Department approved the off site road improvements and the road will be paved from the Moiese Lane access to the Eastside Highway. The site distances meet the AASHTO standards. There are no hills or site triangles that would cause any problems. In regard to improvements on Moiese Lane, he reviewed the AASHTO standards and the amount of traffic will classify this as a low volume road. Therefore it does not need to be paved. The primary access must be paved. Nathan stated the conclusion is there is no evidence that further mitigation needs to be done. In regard to the driveways, there will be a no access strip along the county road and the Eastside Highway (MDOT) will not allow any new approaches.

Commissioner Rokosch asked about the average daily trip count. Nathan stated the Road Department obtains that information. Commissioner Rokosch asked what the additional trips would add up to. Nathan stated it would bring the trips closer to 400, so they designed Moiese Lane for that amount of traffic. He noted not all of the traffic will come out on Moiese Lane but will rather go directly to Eastside Highway. Moiese Lane will still be classified as a low volume road. The calculation of vehicular trips is taken from the national guidelines, so it is more for urban environments (8-9 trips per day).

Commissioner Grandstaff asked where the school bus picks up would be located. Nathan stated the school did not comment so he is not knowledgeable about this. Commissioner Grandstaff asked if there was any kind of 'pull out' area for the kids. Nathan stated the national guidelines suggest this road can be one lane, but they are paving it as 18' with 2' on each side.

Karen noted this has varied over time. Currently the buses want to stop on the road stopping traffic. Commissioner Grandstaff stated she is looking for a place for these kids to stand while they are waiting for the bus. She felt there needs to be some setback allowing a place for the kids to stand. Nathan stated in his opinion, that area is not needed. Ron stated he has no problem putting something in for the kids.

Commissioner Chilcott stated he would like some visibility triangle. Nathan presented a large board showing the intersections/easements (60' wide) showing the site triangle for traffic.

Commissioner Chilcott indicated he was talking about an area where the area is kept clear so lot owners do not plant trees and shrubs. Nathan stated he has information on limiting any landscaping in that easement.

Commissioner Rokosch asked in regard to the lots adjacent to the triangle; how will the actual construction on the lots affect that site distance. Nathan stated the site triangle will be protected when the construction occurs.

Commissioner Rokosch asked Karen Hughes about the impacts of Moiese Lane east of the proposed entrance. Karen stated if they request additional standards, the mitigation is necessary to go above and beyond the standards. The impacts of Moiese Lane past the approach is unlikely based upon what the application submitted and what the road department submitted. Commissioner Rokosch advised Nathan they gave no consideration to how Moiese Lane loops and the two accesses onto Eastside Highway. Karen stated the traffic impact analysis was utilized and how they foresaw the most likely route the traffic would travel.

Nathan stated he reviewed this. There are 20 roads that are served by Moiese Lane right now. There is only evidence of 112 trips when stats show it should be 160 trips. So, the cars are taking a certain route. This should not be significant enough to require consideration.

Commissioner Rokosch expressed concern about dust abatement, but that would be addressed that under public health and safety.

Commissioner Driscoll made the site visit and she saw some traffic issues. She stated she is glad Nathan included that route for Eastside Highway access.

Commissioner Rokosch asked about the corner of Ambrose, Moiese and Eastside Highway. Nathan stated they looked at this three way intersection, but the Road Department decided where those road counts should be placed. Commissioner Rokosch asked if there was enough data to study these impacts.

Commissioner Chilcott noted having a paved or gravel road option will increase the road traffic. The Subdivision Regulations address the point of access to the nearest county road. In this case, it is the Eastside Highway due west. They have no evidence of a significant impact. Commissioner Chilcott stated they have discussed this issue enough and they need to move to the issue of police and fire.

Commissioner Rokosch noted this issue was apparently not resolved by the Road and Bridge Department and the facts remain on this issue of impact.

Commissioner Driscoll asked Road Supervisor Dave Ohnstad how his staff determines which way to perform the road count. Dave stated the subdivision regulations require them to identify the most logical route. The distance from the subdivision access to the Eastside Highway is hundreds of feet, so it is logical to see the route they will take. Dave stated once they hit the state highway it is the end of the county's study.

Nathan stated he takes objection to the comment that 'no analysis' was completed. They did an analysis and submitted it to the county, whereby the road and other professional

engineers took a look at it. He stated the traffic will be minimal and thus it is not an impact that needs mitigation.

Commissioner Driscoll asked Dave how they could obtain the Eastside Highway counts. Alex stated he is not sure that data can be of use in this discussion. He noted the access roads need to be brought up to standards, but they have no control over the state route (i.e., the number of cars on state route). Commissioner Driscoll noted the state route is where the traffic incidents/accidents will occur. Alex stated for the most part once the traffic makes it to the state routes, the county has no control. Commissioner Rokosch stated there are certain traffic hazards and those hazards are germane to their decision. He stated it is important to look at these issues as if they are unsafe conditions. Alex stated to some extent the Board can address this issue by zoning for land suitability. In this instance, these conditions are under the control of the MDOT.

Nathan stated the other party is MDOT and they have an approach permit from them. MDOT was to determine if additional mitigation is required, and they did not require mitigation.

In regard to onsite traffic considerations, Nathan stated they have already presented the evidence. The roads are being constructed under the regulations.

Karen stated those copies from Nathan are available to the public.

Commissioner Rokosch stated he has a concern with the storm water design utilizing the irrigation ditch. In the mitigation for agricultural water, the piping is going to occur. Nathan stated they will have engineering designs and the grading and drainage report shows a low point for the retention of water. They will make an analysis to make sure the low spot is sized for a 100-year storm event. Commissioner Rokosch recommends this be brought to the Montana State Department of Quality's (DEQ) attention. Nathan stated Morgan Farrell is important to this part of the discussion/decision. Morgan stated the DEQ is making that review and he will make sure the information is passed on and addressed. Commissioner Chilcott asked if DEQ is addressing this, do they need to spend any more time on this issue. Commissioner Rokosch noted they have a significant change which needs to be noted.

Morgan stated if it is a change, the person making that review needs to know the information and he will make sure they are aware of that.

In regard to police and fire protection: Nathan stated they need to address the information in front of them. There was concern about the Sheriff, and the need to mitigate those services. In order to do so, they utilized the 2006-07 budget expenditures of 4.1 million (Sheriff's Budget). The Sheriff has asked for a \$700,000 increase so we added that in and divided it by the census. The average number of people per home is 2.5 so the fee of \$296.00 per lot contribution is fair in order to mitigate this impact.

Commissioner Grandstaff stated the formula is faulty because county population is 40,000 people which include municipal areas. She felt the municipal areas should not be included. She stated she developed a formula which is the Sheriff's budget of 4.8 million divided by the number of lots created in the last 15 years, which equals 4,800 lots. That would calculate out to \$957.36 per lot. She stated she visited with the Sheriff and their discussion was that one subdivision can not mitigate the last 20 years of development. If we round that per lot figure up to \$1,000; that would be \$33,000 which would buy a new police car. She felt that amount would mitigate this impact. Nathan stated this is a new subdivision and they can not be responsible for the past years. That is why and how they utilized their formula.

Commissioner Rokosch agreed the Sheriff expressed no one subdivision can mitigate for the past needs, but can they come up with fair and equitable impacts of this particular proposal.

Ron Lords stated the calculations should be based on the services provided. There are concurrent jurisdictions whereby the Sheriff will handle those calls. The fire department has requested \$500.00 so he feels he could also use that same figure for the Sheriff's Office. Commissioner Grandstaff stated this subdivision is 25 miles away from those services.

Ron asked how they can utilize a calculation that does not include these lots for the previous years. Commissioner Chilcott agreed, that would be using cumulative data and the law does not allow that.

Commissioner Grandstaff stated Ron's formula does not make sense because the people included in this count are those who reside at the municipal level. Commissioner Chilcott stated the Sheriff's Office provides detention facilities for all citizens. They have concurrent jurisdiction except enforcement of municipal ordinances. The county has a satellite station on the North end of Main Street in Stevensville so there is also access at that location. He asked what the nexus or proportionality is for the 4,800 lots that have been developed.

Commissioner Grandstaff stated she visited with the Sheriff late one day and part of that discussion was that it is not up to him to come up with a formula. Nathan stated the evidence is there but there was no comment from the Sheriff. Commissioner Grandstaff stated the Sheriff offered to come today, but she told him she would relay these concerns.

Commissioner Grandstaff stated a purchase of a patrol car would be mitigation in her mind.

Bill stated the law requires the proportionality and nexus. This was based on a Supreme Court ruling (Yellowstone 1964 case). Previous development can not be considered.

Henry Silvera stated Commissioner Grandstaff's formula utilizes the 15 years of lot development. Commissioner Grandstaff stated the Commissioners discussed various

formulas, and they have not decided if it is the county's responsibility to develop a formula or if it is the developer. She just does not agree with Nathan's formula. She stated the question is there are effects of this subdivision on law enforcement. In her mind, the mitigation would be the purchase of one patrol car. Ron stated he would purchase one half of a patrol car and that is more than anyone else has contributed to the Sheriff's Office.

Commissioner Rokosch stated they will continue to identify and develop a formula for this mitigation. He noted patrol cars have a life history of 5 years and those impacts continue on for many years. Ron stated the people who purchase the lots will pay taxes, and those taxes contribute to the Sheriff's Office. Commissioner Rokosch stated in the absence of having a formula they will have to use the best means possible. The offer by Ron was \$296.00 per lot and is now \$500.00 per lot.

Commissioner Driscoll asked if that money can be obtained at the time of final plat rather than when the lots are transferred. Ron stated the services are needed when the lots are transferred or sold. For example, if the contributions are based on the effects, then it should be when something happens to the lots. Commissioner Rokosch stated the local services along with planning deal with the services long before the lots are sold. Therefore it would be better to have this money at the time of final plat so they can plan for it and it will be available when those services are required. Ron stated if that is what is required he will pay those fees up front for law enforcement, fire, and schools.

Nathan stated the focus should be on this subdivision and until the lots are sold the effects do not really come into fruition. When you connect to a sewer you pay the connection fee then, not before.

Commissioner Chilcott confirmed Ron is giving \$500.00 per lot for the Sheriff's Office, \$500.00 per lot for the school districts and \$500.00 per lot for fire districts as up front costs. Ron stated yes.

In regard to utilities; Nathan addressed the letter from North Western Energy that has already been obtained prior to the time it is actually needed.

In regard to schools they are offering \$500.00 per lot. Nathan noted they received a letter from Stevensville School District and they did not ask for any contribution. He noted they also allow out of school district students.

A short recess was taken.

Commissioner Rokosch stated in regard to local services this Board must make a determination of the effects of local services and mitigation as proposed. The letter(s) from the schools has been noted. OPI stated the annual cost is \$7,000 to educate each student. He further noted in the absence of a well defined formula to define the effects; they do have an impact fee which is Senate Bill 185. That bill determines the methods for capital costs (which have not been established by the county). In the absence of an

established impact advisory committee, the Commissioners can only deliberate and ask for voluntary contributions. Alex stated that is correct.

Superintendent of Schools Dr. Ernie Jean was now present. Commissioner Rokosch asked Ernie for his input on the cost per student for a school district and how the Commissioners might determine that cost for mitigation purposes. Ernie stated the pupil cost is determined by all funds for the school district divided by the number of students that are in attendance. He also noted the OPI includes all capital costs. The general operating costs per pupil has not been calculated. The figure would also include transportation. For the first year, the school receives no monies from the state. Ernie also stated in the 1990's Florence received 100 new students per year and their budget was based on the previous year. He stated that was not a good thing for the school. He indicated he was not prepared to give a per pupil cost for each year but he would be willing to do some research and find that information out. He would probably have to base that figure on last year's budget.

Commissioner Rokosch reiterated the need for an area for students while they are waiting for the bus. Ron stated they would come up with a bus shed design. Commissioner Chilcott asked if the site triangle would cause an issue for the structure. Nathan stated by looking at the map, his suggestion would be to put the shed in the park area; otherwise they will have to obtain an approach permit as it will be in the county right of way. Alex stated for purposes of county liability, place it outside of the county right of way.

Alex stated the school transportation personnel know where this should be placed so if everyone is comfortable with that, they should let them make that decision. The Board concurred with Alex.

Commissioner Grandstaff asked about interior sidewalks. Nathan stated the current regulations do not require pedestrian sidewalks, nor does the AASHTO Standards. Nathan felt the roads are wide enough and the traffic is low enough to provide for that safety. Commissioner Grandstaff stated they just negotiated a bus shelter but they have no way to get to the shed. To her that is a safety issue. Nathan stated the short length of road would require them to walk no more than 1/3 of a mile. This subdivision is a 'community' and it should be safe for the pedestrian traffic. Commissioner Grandstaff indicated it is unacceptable to her not to have sidewalks. Nathan stated there are similar subdivisions that have substandard roads and no sidewalks, and there are no statistics to show the pedestrians are in jeopardy. Commissioner Grandstaff stated the existing subdivisions are not good standards to hold the Commissioners too. Nathan stated there are no regulations requiring the developer to have pedestrian sidewalks. Commissioner Grandstaff stated sidewalks are a 'sticking point with her'.

Karen stated although there is not a requirement under Section 5-4-8, improvements can include pedestrian safety. The Commissioners simply need the findings of facts to support that requirement.

Commissioner Driscoll stated she has a lot of background in traffic accidents and head injuries due to a settlement she was involved in. She indicated just because we don't have other subdivisions with sidewalks does not mean we shouldn't address it now. She said it could be a sidewalk or pathway.

Bill indicated this issue comes down to the determination of the evidence that is available. Under Section 5-4-8 of the regulations it addresses the on and off site for pro rata share when needed. There has to be some evidence for this Board to show the need, and in the absence of that, it is inappropriate to impose an arbitrary requirement. Commissioner Grandstaff stated there is no evidence to say otherwise.

Nathan relayed the AASHTO Standards do not address the use of sidewalks on the low volume roads. Commissioner Rokosch stated that is a deficiency in the standards. Ron stated he would like to keep the rural character, and does not want to see concrete walkways. He stated he is willing to propose a gravel pathway. Karen stated it would not change the plat as long as it was just within the easement, making sure they have it conditioned properly. Nathan stated there is enough room.

Commissioner Grandstaff stated Hamilton School District had some issue for access to Daly School on Ravalli Street and they put those concrete parking bumpers. This created a defacto sidewalk. She stated it is not very attractive but it works. She stated her concern is the gravel would not be maintained. Ron asked if a 2' wide asphalt sidewalk would work.

Commissioner Driscoll stated there are ADA compliance issues that need to be addressed. Ron stated the asphalt sidewalk would be kept within the row and meets the ADA requirements.

Nathan stated they can widen the shoulder of the road and put down a paint strip. They can also do a detachment from the paved road and walk way (i.e., Mountain Meadows Subdivision in Florence is a good example of that). Commissioner Grandstaff indicated she likes the separation of the road and walkway. Nathan stated he knows how much people use sidewalks and he is sure they will not use it. Commissioner Grandstaff stated the residents should have that option.

Ron stated to recap this issue he will provide a walk way within the easement with the separation factor, with a material that can be utilized by handicap persons or is ADA compliant, on one side of each road, meeting all state federal requirements. He will not take this all the way to the Eastside Highway for safety reasons.

Commissioner Chilcott stated they have mitigated all of the concerns.

Commissioner Thompson stated he needs to leave this meeting in order to attend a personal meeting in Missoula. He will be available by cell phone if needed for one more hour.

In regard to the natural environment (soil, noxious weeds, air, water etc.): Nathan addressed the staff report and what has been addressed up to date. He stated there is nothing that shows any negative affect on the natural environment. In regard to pharmaceuticals; there is no evidence of significant concern. In regard to community water system; it meets all state laws and no agency including the DNRC has recommended they complete a community water system.

Commissioner Chilcott suggested they not address new information unless it is in response to questions they have. Nathan stated this Board does not have the authority to require a community water system. Nathan stated they brought an expert today to discuss this. He will not be bringing any new information; rather his visit is more of an educational benefit.

Commissioner Rokosch concurred with the regulations but stated what are contained in the regulations are the Board's criteria and they are bound to make a decision in the public interest in regard to groundwater contamination. Nathan stated there is no evidence to show they are contaminating the ground water.

Commissioner Chilcott asked Alex to comment on this discussion. Alex stated he does not know if state law draws a distinction between evidence and education. It sounds to him more like new information and a new Planning Board meeting might be needed. Nathan stated this information is credible and relevant to their decisions here today.

Bill stated part of the reason this information was brought in was due to the Board's questions at the last hearing. Commissioner Rokosch asked if it was relevant information. Alex stated if it is worth listing to it is relevant.

The Developer asked for a brief recess.

Nathan stated the Developer was simply willing to address these issues the Commissioners had question on. Tom Anderson is sent to educate the Commissioners on Level two treatment systems. They would also like to address the community water system.

Commissioner Chilcott asked how five straws in the cup versus five cups make a difference. He stated the residential demands on the water usage are going to be the same. He asked what makes the community water system better. Commissioner Rokosch suggested Commissioner Chilcott refer to Exhibit A-8 from DNRC which addresses the supply and impacts. When he does, he will understand the significance.

Commissioner Rokosch addressed Nathan's concern that no agency recommended a community water system but DNRC asked us to consider it. The letter from DNRC states "it may be prudent to consider community water system for this density and number of lots"; and he stated this might be one of the ways to get around the water right process. Commissioner Rokosch felt this Board needs to protect those rights. DNRC further stated this "area needs aquifer testing and notification to the adjacent owners.

Commissioner Rokosch felt the senior water rights are not protected with 33 individual wells. Further, DNRC stated "wells will be drilled within close proximity and could interfere with each other for aquifer suitability" and "the community system would be subject to water testing, whereas there would be no testing for single family wells".

Commissioner Chilcott asked Karen if Ravalli County is a closed Basin. Karen and Morgan noted yes. Nathan stated we are a closed 'surface'. Commissioner Rokosch noted some links between a closed basin, the groundwater consumption and surface water. He stated one might deplete the other. Thus, the consumption of the groundwater will potentially affect both ground and surface water user's rights. He felt a community water system could mitigate that.

Commissioner Driscoll indicated the new law states you do have to take into account the consumption of ground water. Commissioner Rokosch added it is their responsibility to protect ground water rights, as well as contamination.

Nathan stated he can respond to some of these but the Developer has someone here who is qualified to answer those questions. Agency comments may be well meaning, but DNRC is simply commenting. Nathan further noted this DNRC representative is simply putting in his own opinion, and he should not be commenting on this. One mitigation is to go with deeper wells, and all well logs are filed with DNRC, while another is to provide a casing seal as the well is installed. He stated these would mitigate DNRC's concerns.

Nathan also stated their expert can address the water rights and how much water is being pulled from the aquifer. There is plenty of water at this location. He noted the previous county Environmental Health Director (Theresa Blazicevich) also stated that to be true.

Commissioner Rokosch asked about groundwater monitoring. Nathan stated there was not test well on this property but there were sufficient well logs from adjacent property. Plus, Theresa already made those comments about sufficient water. There have been no negative comments about water availability on this ground.

Morgan stated he did the review but DEQ has not received it yet. He reviews the water quantity based on well logs and he is comfortable that it meets the criteria. Morgan does not get into the issue of individual rights.

Commissioner Driscoll referenced her Hamilton property and well, asking Morgan if 33 wells would create contamination potential. Morgan stated her particular well is different than this issue of groundwater contamination.

Alex stated 'new information' is not how it gets to you, 'but the fact that it is new information'. He noted technical studies are new information and the Board needs to use caution here.

Kam Stinger, local consultant in Missoula (representing the Developer) was then asked questions. Commissioner Driscoll asked about having 33 holes in the ground and if that created potential contamination that could affect everyone. Kam stated the more holes the more chance of contamination. DNRC states there are advantages to the community system, because most people hire a driller and when they hit the water, due to the high costs of drilling, they stop at the first level of water (at the top of the glass). He stated they propose to construct the wells to a much deeper depth to obtain the draw down needed. Most of the wells in this area have their wells above 70 feet. Their proposal is to go deeper with casing and a second casing that allows bentonite grout to be pumped between the two casings. This will protect the aquifer, as it will block the conduit on the outside of the case so nothing can get to the aquifer. Also, effluent travels and this will protect this hole in the aquifer by sealing it.

Commissioner Rokosch asked about the relevance of the Supreme Court decision. Alex stated there were a series of those decisions. DNRC and or the State legislature establish the rules for the wells. Alex stated the county has no authority to require a community system. So long as you allow single family wells, the water rights issue is not part of this. Nathan noted no permit is required as long as the draw of the well stays within the 35 gallons per minute.

Kam addressed the Smith River Case in regard to closed basins. By law, people can drill wells within the 35 gallons per minute rate. There was a proposal to limit that amount but it was not passed. This is for domestic water use and irrigation for up to 4 acres. The driller fills out the certificate of completion and it is submitted to DNRC. In regard to ground water contamination the DNRC is still interpreting this. 90% of the water you obtain goes back into the aquifer, while 100% of the irrigation goes back. There is a connection between ground water and conductivity. A large well next to the Bitterroot River that will pump 100's gallons of minute will have an impact. However, on the top of a mountain is there an adverse impact on groundwater users? DNRC is struggling with these issues.

Alex stated the Supreme Court may strike down the 35 gallons per minute but until that time, you must follow it.

Commissioner Chilcott expressed concern about water rights and contamination. Commissioner Rokosch stated the impact on groundwater is from the consumption. Commissioner Chilcott asked if the mitigation being offered mitigates these concerns.

Commissioner Rokosch stated that is the question of additional sealed casing, and by asking these questions they are being diligent.

Commissioner Driscoll addressed the recycled pharmaceuticals, and how does one enforce that. Nathan stated as far as enforcement, there is no regulatory tool to ensure enforcement. The Developer can simply use the tools that are in place. He noted covenants are educational tools.

Commissioner Grandstaff stated she appreciates this as this type of notification 'is probably as good as it gets'. Nathan noted the other lot owners will have some enforcement under their covenants. Alex stated this is a county wide issue, maybe the Board of Health may want to weigh in on this in the future. There is never any way to enforce this. Commissioner Grandstaff stated they need to start with an educational effort.

Commissioner Rokosch stated a community water system would allow for water testing.

Kam stated the wells will be 100' in depth which is a mitigation measure because the first water table is vulnerable to water contamination. By going deeper, they are much less vulnerable to contamination. Shallow wells are the easiest wells to become contaminated.

Commissioner Rokosch noted the community wells are also deeper wells and they have testing done.

Commissioner Chilcott stated they do not require people to monitor themselves as that are a personal responsibility. Government does not make people do things, as there is a personal responsibility for each individual. He stated this is not government's responsibility. This is a private process and they have their own responsibility. He stated he feels the 100' depth and extra sealed casing would mitigate any concerns the Board might have in this regard.

Commissioner Grandstaff asked Morgan how many people take advantage of the well testing. Morgan stated some people are very careful while others are not. His opinion is if it is a public well it is a public health issue; if an individual well it is up to the individual.

Commissioner Rokosch agreed each person needs to protect their health, but the Board needs to look at ensuring the activities are not adversely affecting their neighbors.

Nathan stated the testing is to show if the water you are drinking is ok to drink, not whether it affects the neighbor. Testimony and evidence show there is ample water, and with the mitigation of well depth and extra casing, the well permit process could require a testing be done.

Commissioner Grandstaff asked what evidence is there to show there is enough water. Nathan stated the DEQ and local sanitarians have stated that. Morgan stated this has not gone to DEQ yet. In regard to water availability, by looking at well logs, none were out of balance with the requirements, and that is not usually the case. Commissioner Grandstaff stated it seems to her all the mitigation offered addressed the points DEQ addressed.

Commissioner Chilcott asked if the Board could accept a non significant finding for the #4 criteria. Commissioner Rokosch stated as mitigated it is not significant, under number #4 for community water systems. The Board concurred.

In regard to water contamination, for the level two treatment systems, Nathan stated Morgan or Mr. Anderson should address this.

Tom Anderson of Kalispell Glacier Precast talked about the Sandtex system. This system addresses above 5,000 gallons per day. For the Moiese Meadows project, Sandtex would not be a viable option. The system would have the same effects of a level 2 treatment, and there are several systems available to reduce nitrates by 60%.

Commissioner Rokosch discussed the national wastewater conditions. Tom stated there is a process that is approved by the state with different conditions. Colorado School of Mines studied effluents from secondary systems for soils down to 4' and they found the Advantax will exceed any sewage treatment system. Nathan stated they plan on utilizing the Advantax system. Tom stated they have to meet the 60% reduction in Nitrates (Nitrogen) for residential applications.

Nathan stated NCL is 10 milligrams per liter for drinking water; so they will meet those requirements. Commissioner Rokosch stated he is addressing the public concerns as well.

Morgan reiterated the individual lots can not be re-written for an individual system. The other questions are the contract for the maintenance and follow up and what mechanism would the county have. Nathan stated they would address the requirements for individual lots.

Tom indicated the State requires perpetual maintenance on the systems. There is no maintenance contract police but it is something when a home is sold, the notification is made. The contract is with the service provider, i.e., Glacier Pump.

Morgan stated they would need to create the mechanism as level 2 comes in. The only thing he would suggest would be the covenants.

Tom stated each one of these homes will have a septic system to install their advance treatment system. So far the systems have worked well for his business tenure of seven years.

Morgan stated the previous systems installed are the Norweco brands but no one has followed up on them. The maintenance issue is something their department needs to address, but for the time being the issue needs to be addressed in the covenants.

Commissioner Rokosch noted other areas of concern are the air quality. He asked Nathan to address this in regard to the gravel roads. Nathan stated based on the analysis of traffic, heading east on Moiese will be insignificant. The roads will be paved and they

did some research and visited with DEQ. The concern is for the PM2 10 particulate for smoke. They will require EPA efficient wood stoves or no wood stoves will be allowed.

Commissioner Driscoll stated any new built out subdivision need that requirement. Ravalli County is sharing air quality issues with Missoula County and they already have a problem.

Commissioner Rokosch stated the EPA has good requirements and individuals need to utilize bio mass. Commissioner Grandstaff noted in the future this will become a serious issue in Ravalli County so we should address it now. Commissioner Rokosch stated our air pollution is also from internal combustion engines.

Morgan stated some determination on pollution is due to the wood smoke. Commissioner Driscoll asked Morgan for his personal opinion. Morgan stated if the Developer offers not to allow wood stoves, why turn it down. Commissioner Driscoll and Commissioner Grandstaff stated they would like to see a voluntary ban on wood stoves.

Commissioner Rokosch asked Morgan with 33 homes what would be the reduction to the air shed. Morgan stated he would not put a number on it but in the future they are going to have to reduce this.

Commissioner Chilcott stated he does not discount what Morgan says. Nathan stated they will not allow wood stoves within the homes. Commissioner Chilcott asked if they could agree that criteria #4 are mitigated. The Board concurred it was.

In regard to criteria #5 criteria for the wildlife: Nathan stated there are wildlife covenants and the regulations require they look at species of special concern. The Developer did hire experts for this review and the findings are non significant.

Commissioner Rokosch stated there was some concerns and asked if the developer would be willing to establish some baseline for the effects on riparian water quality that would help the refuge.

Ron stated he has spent more money than any other applicant on these 'mitigating issues' that are not required in the regulations, and he asked why he should contribute to some 'future developments data'.

Commissioner Chilcott stated by piping the ditch, the refuge is getting a better water flow which might improve the habitat. The Developer has mitigated above and beyond this criterion. He agreed the Developer has done quite a bit of mitigation which is outside the county regulations.

Commissioner Rokosch reiterated they are here to protect the public resources. Nathan stated they do not have any facts to show they are negatively impacting the environment. They will pipe the ditch and this development will not affect the refuge in any manner.

Commissioner Chilcott recommend the criteria be non significant as mitigated. The Board concurred.

In regard to criteria #6, the effects on public safety: Commissioner Rokosch asked if there were any other known hazards.

Commissioner Grandstaff addressed the park issue. She noted there is 1+ acre, and she would like to see some trees and picnic tables. Nathan stated the Planning Board approved the cash in lieu. He stated the applicant is willing to do a well, grass seeding, trees irrigation system and picnic tables if the Board would like that. Commissioner Grandstaff stated it would be easier for the homeowners to maintain the park once created.

Commissioner Rokosch addressed the Eastside Highway traffic. He asked if in MDOT's process for approval, they accounted for existing fatalities and accidents. Alex stated the State has their formulas.

The applicant's attorney asked that Commissioner Thompson be placed on the phone when the decision is ready for a vote as he would like a full board.

Commissioner Rokosch asked Alex what the exposure to the county is for the additional trips onto the Eastside Highway if an accident occurs. Alex stated none that he knows of as the county liability for roads is a developing issue. Missoula has a negligent design case in court. Since the state has discretion over the access permits, someone could sue the state but not the county. If our design standards were flawed, the issue could come up. He hates to say there is never liability, but it is not a particular concern.

Commissioner Rokosch asked if this is different for county roads. Alex stated the only issue is the negligent design or maintenance of a road. It usually comes up with a curve etc. In terms of road permits when the county uses federal and state standards, he can not see how liability would occur for the county.

Commissioner Chilcott noted the findings for #6 are non significant with the mitigations.

Commissioner Thompson was not available on cell phone for the motion.

Commissioner Rokosch asked Alex about the litigation that is unresolved that might have bearing on the approval or denial of this subdivision, and the time frame consideration. He asked this be noted in light of the proceedings. Alex stated in regard to the time line issue, Karen is 'keeping the clock' on this issue. In regard to the other issues, there are multiple venue litigations, which include a state court case with the Bitterrooters for Planning that goes in front of Judge Langton with a request for a restraining order and hearing this past Monday and issued after July 30th. There is also a federal court issue of the original settlement for final ruling. Should the court grant a temporary restraining order, we obtain a procedural morass and it would prohibit the filing of a final plat if

there was an approval here today? There could be questions of if the decision made today would be valid, and they could add that to the litigation. There are no certain answers but we would probably have to go back through this process. If formally granted by the Judge, we might have to go back through this process, and then we 'could just jump out the window'.

Commissioner Rokosch asked is this subdivision subject to the interim zoning? Alex stated if the subdivision is enjoined the terms of this settlement are out.

Commissioner Rokosch stated in light of this uncertainty and until legal matters are resolved he will abstain on voting on this proposal.

Commissioner Chilcott asked Alex what the legal requirements are for Commissioner Rokosch to vote. Alex stated you can 'lead a horse to water but you can not make him drink'.

Commissioner Rokosch called for a motion. Alex stated there was a good bit of information presented here today, so present an aggregate discussion if there was relevant information.

Commissioner Rokosch noted there is additional testimony by Kam, Tom and Morgan. Commissioner Grandstaff stated the information by Kam and Tom was not really new; it was an update or an educational lecture on the level 2 treatment and community water systems. Commissioner Chilcott stated it was credible and educational and he does not see that it had an impact, other to make sure we understood our mitigation.

Commissioner Rokosch asked what constitutes the adequacy to protect public interest and resources.

Alex stated there is no guidance from the state. The question of what is information. If they interpret it literally it will all be new information. So, it must be something significant. If it is a rehash, it is not new information. In terms of relevancy, if you haven't looked at it within the deliberations, it was not relevant and your decision was not based on it.

Commissioner Driscoll stated so if it is a clarification, it is not new information, because she did make a decision based on the experts' testimony today. Alex stated if they came in and gave you a whole new scoop of information, then it would be new. If it is just explained it is not new information. He did not hear anything today that makes him worry about it.

Commissioner Grandstaff made a motion to approve Moiese Meadows Subdivision based on the findings of fact within the staff report with the following conditions:

- An off road shelter for school children to be constructed at the southeast corner of the park

- \$500 per lot to fire district, \$500 per lot to the Sheriff's Office, \$500 per lot to the Stevensville School District, to be paid prior to final plat approval
- A pedestrian walkway along one side of each interior road as discussed, meeting ADA compliance and to connect to the school bus shelter and Moiese Lane (location may be modified with School Districts approval)
- Wells will be drilled (at the deeper depth with second casing and bentonite grout) to the specifications offered by the developer this date
- Level 2 wastewater treatment required, including a covenant requiring lot owners to conduct regular maintenance of wastewater treatments systems
- The lots in the future may not be redesigned for a lower level of wastewater treatment
- A prohibition on wood stoves
- A covenant requiring proper disposal of pharmaceuticals
- A park with irrigation well, irrigation system, lawn and trees, picnic tables
- Accept the site triangle and road issues under #5 in the applicant's proposal with 3' height limitation for anything affecting visibility
- Piping materials provided by developer from Supply Ditch head gate to northern end of property as approved by Lee Metcalf Wildlife Refuge manager
- Notification of irrigation facilities and easements, with notification of maintenance through mowing, herbicides fire etc. to the homeowners

Commissioner Driscoll seconded the motion.

Commissioner Rokosch stated he wanted the record to note the amendments to the conclusions of law, and to note the pending litigation and ensure we have accurately captured the effect of the law suit if the project is approved here today. He also noted this approval could be reconsidered if invalidated by the pending litigation

Commissioner Chilcott stated this has been a tedious and painful proceeding. He would like to compliment this Board for the tenacity in this review.

Commissioner Chilcott, Grandstaff and Driscoll voted "aye" for conditional approval. Commissioner Rokosch abstained. Motion carried.